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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-994

LUQMAN ABDUSH-SHAHID,

Petitioner,

—against—

NEW YORK STATE NARCOTICS ADDICTION CONTROL COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

PAUL G. CHEVIGNY
ALAN H. LEVINE
New York Civil Liberties Union
84 Fifth Avenue
New York, N. Y. 10011
(212) 924-7800

MELVIN L. WULF
JOEL M. GORA
American Civil Liberties Union
22 East 40th Street
New York, N. Y. 10016
(212) 725-1222

Attorneys for Petitioner Luqman Abdush-Shahid

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76

LUQMAN ABDUSH-SHAHID,
Petitioner

v.

New York State Narcotics
Addiction Control Commission, Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE NEW YORK STATE COURT OF APPEALS

The petitioner prays that a writ of certiorari issue to review a decision dated October 19, 1976 by the New York State Court of Appeals, dismissing the appeal of the petitioner Luqman Abdush-Shahid.

OPINIONS BELOW

The decision of the New York Court of Appeals of October 19, 1976 is not reported and is set forth in App., infra, p. 54A. The decision of the Appellate Division Second Department, dated May 3, 1976 is reported

at 52 A.D. 2d 846 and appears in the App., infra, p. 51A. The decision of the Supreme Court of Westchester County dated November 10, 1975 is not reported and appears in the App., infra, p. 20A. The earlier memorandum decision of the New York Court of Appeals is reported at 34 N.Y. 2d 538 and appears in App., infra, p. 19A. The earlier decision of the Appellate Division, Second Department, is reported at 41 A.D. 2d 803 and appears in App., infra, p. 17A. The earlier decision of the Supreme Court of Westchester County is not reported and appears in App., infra, p. 16A.

JURISDICTION

The decision of the New York Court of Appeals was entered on October 19, 1976. Jurisdiction is invoked under 28 USC §1257 (3).

QUESTIONS PRESENTED

1. Whether dismissal of a civil servant from a position for which no uniform is required, solely because he is obliged to wear traditional religious garb, violates the First Amendment.

2. Whether a decision by state courts that a person's religion does not oblige him to wear traditional religious garb, when all the evidence is that his religion does so oblige him, violates the First Amendment.

3. Whether dismissal of a civil

servant because he wears traditional religious garb, when other types of clothing are permitted at the discretion of agents of the state, violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

REGULATIONS INVOLVED

The two dress regulations promulgated by the respondent dated October 29, 1968 and October 1, 1972 are reproduced in App., infra, pp. 2A, 4A respectively.

STATEMENT OF THE CASE

In July, 1969, petitioner Luqman Abdush-Shahid was employed by the New York State Narcotics Addiction Control Commission (since absorbed into the Office of Drug Abuse Services) in a civil service position as a Narcotics Correction Officer or Narcotics Rehabilitation Officer, as the position has variously been called. There are a large number of such officers, and petitioner's position was not supervisory. The job essentially involved the security and rehabilitation of people detained or otherwise under treatment pursuant to New York's drug laws in one of the state's many facilities or programs, and did not require the wearing of a uniform. The respondent had a "Dress and Grooming" policy which required "a business, shirt, jacket and tie," with a number of exceptions, largely at the discretion of the facility director (App., infra, p. 2A) During the pendency of the litigation the respondent promulgated a new dress code (App., infra, 4A) which still

allowed for discretionary exceptions, Id. §2018.25(c), although not in the case of clothing "indicative of religious belief or affiliation " Id. §2018.10(a). App., infra p.6A, 12A.

At the time the petitioner took his job he had a different name (Ernest Stringer), and was not an adherent of the Muslim faith. Subsequent to the time he became a civil servant, he adopted his present Muslim name, becoming a Sunni or orthodox Muslim, and a member of the Mosque of Islamic Brotherhood. According to the tenets of his faith, he was required to wear and did wear traditional garb including a "biadlia", or long caftan, and a skull-cap (photograph, Court of Appeals Record p. 12, App., infra p. 1A).

In 1971, Mr. Abdush-Shahid was tranferred to a facility in Westchester County at which the director chose to enforce the letter of the dress regulation then in effect. Mr. Abdush-Shahid was charged with "misconduct" for refusing to comply with the dress regulation and a hearing was held before a hearing officer appointed by the respondent in accordance with the New York Civil Service Law. Witnesses for the respondent testified that the clothing requirements were intended to advance "neutrality", "lack of temptation", "identification with the facility in terms of thinking" and exclusion of sectarianism. No one claimed that Mr. Abdush-Shahid had ever done any overt proselytizing.

The hearing officer specifically found that "respondent [Luqman Abdush-Shahid] wore

his garb in good faith and in the belief that he is religiously obligated to do so", a finding which has never since been questioned. Nevertheless, the hearing officer concluded, "where the conflict arises in individual rights with matters of state or governmental necessity, then the individual's rights must be violated and the common good preferred." (App., infra p. 14A) Petitioner was dismissed from his position on November 19, 1971 and he has not held government employment from that day to this.

Petitioner commenced this action in New York State Supreme Court for Westchester County to review the decision of respondent upon the grounds that he had been deprived of due process and equal protection of the laws, as well as rights to freedom of religion and expression. The Supreme Court dismissed the matter without a trial, stating that responden's actions "did not violate any of the petitioner's constitutional rights." (App., infra p. 17A) The Appellate Division affirmed. Petitioner appealed as of right to the Court of Appeals, and the Court remanded the case to the trial court in a short memorandum saying:

> It does not appear with certainty that petitioner could not have obtained a religious dispensation to accommodate his clothing to the requirements of his superiors under the dress code. Nor does it appear that the clothing requirement by the agency was justified by the needs of the facility or petitioner's duties

sufficient to override a religious sentiment sincerely held. . . .

. . .

The proceeding should be remitted in order to explore the reasonable availability of the religious dispensation and if not available, then whether the needs of the facility justify overriding the religious mandate. (App., infra, p. 19A.)

Following this, a trial was held in Supreme Court.

The only witness on the first issue, concerning the religious requirement to wear the traditional costume, was petitioner's spiritual leader of the Mosque of Islamic Brotherhood, Imam Tawfiq. His testimony was unequivocal that traditional garb was required and no exception could be made. Although machinery for dispensations in proper cases was available, Imam Tawfiq was clear that this was not such a case. The conclusive passage is quoted by the trial court (App., infra, p. 29A):

Q. Now as I understand Mr. Sattler, as I understand the question, if one of the members of your Mosque came to you and said, 'there is an opening for a mailman, I'm unemployed. I've walked my feet off all over the city and there is not a job to be had. I can get this job provided I wear the uniform which is required to be worn. If I don't get the job my wife and ten children are going to starve.' Is there any way you

can get a dispensation?

A. No, sir, not that I know of. In that situation I don't think so. A situation like that would give --- if that were put through channels it would more than likely become the responsibility of the Islamic officers to try to take care of this individual as opposed to ---.

Q. To see that he did't starve?

A. Yes, sir."

Earlier the Imam testified (App., infra p. 24A):

Q. Is there any occupation or job for which you would make an exception with relation to the requirements of your religion that this particular garb be worn?

A. No sir, I would not.

Q. If you found that the employer could not be induced to change the clothing requirements or permit the person to wear the required garb, would you make an exception?

A. No, sir, I would not.

Despite this evidence, the trial court blandly remarked (App., infra, p. 31A):

. . . although there are channels set up in the Sunni Moslim faith for relaying requests for a dispensation to the King of Saudi Arabia; and even though the King of Saudi Arabia has the power to grant a dispensation; the Imam refused to put a request for a dispensation through channels. The Imam was adamant in his position. Such obduracy can hardly be attributable to the unapproachability to the King of Saudi Arabia since it is a matter of common knowledge that the King permitted an audience even to the most humble suppliants; in fact it was the holding of such an open court which permitted his easy assasination.

As to the second point remanded by the Court of Appeals, "whether the needs of the facility justify overriding the religious mandate," the respondent advanced essentially three justifications:

> (a) The secure institution where Mr. Abdush-Shahid worked conforms to a "rational authority" model, according to which the officers working there must convey an image of the "straight" world;
>
> (b) The traditional Muslim garb is disturbing or alarming to some inmates of such institutions;
>
> (c) The religious garb constitutes a form of proselytizing.

Respondents' witnesses admitted that the "rational authority" model was open to question to such an extent that the respondent also sponsored programs according to a "community model" in which less conventional dress was appropriate. They knew of no evidence that Mr. Abdush-Shahid's garb would be more alarming to former drug addicts than other garb, or indeed than conventional business garb (it was conceded that most inmates did not come from a conventional environment where neckties would be worn). In fact, the dress requirements could be and frequently were waived wherever that was thought useful. Mr. Abdush-Shahid's garb was forbidden, as the second dress code (App., infra, P.6A) emphasized, not because it was less than formal, but just because it was religious. The respondent's witnesses said, for example, that they would not permit a Chasidic Jew wearing religious garb to work in one of their programs. Dr. Seymour Joseph, a Deputy Commissioner for respondent testified about this on cross-examination (Trial Minutes 274-275):

> Q. Suppose a person were able to comply with the regulation, that is, to wear a shirt and tie, but nevertheless wore a religious garb such as, for example, Hasidic Jew; would you permit a person dressed as a Hasidic Jew who wore a long coat, skull cap and garb to work in the facility?
>
> A. No.
>
> Q. You would not?

A. No.

Q. What's the reason for that?

A. Again, the communication that would exist would not be in keeping with the philosophy of the DACC [respondent].

Respondent's witnesses claimed that wearing the garb was "proselytizing", merely because it was religious. There was no claim that the Muslim garb predominated among the officers; in fact one witness, Stephen Chinlund, who had been a director of one of respondent's facilities as well as a Protestant minister, answered a hypothetical question by the Court this way (Trial minutes 446-447):

> Q. If you had a group of five enforcement cfficers under your jurisdiction and one came in protestant garb and one a Catholic priest garb and one Sunni Muslim garb and one rabbi and one an ordinary business suit, would you think that would have an impact on the residents?
>
> A. Well, we had a situation that wasn't quite that dramatic, but I felt the very multiplicity of the example you're giving and the multiplicity of ways of presenting themselves that was on our large officers'

> staff -- there were 200 -- meant that there was a range of possibilities of indentification. That I found helpful.

After a lengthy opinion summarizing the evidence, the trial court concluded App., infra, p. 49A):

> Although much of the language employed by the witnesses on both sides was esoteric psychiatric and psychological jargon, I am of the opinion that the credible evidence presented preponderated in favor of the respondents.
>
> 1. Procedures to procure a dispensation from wearing of religious garb on duty are provided by the Sunni Muslim order but were not availed of and, as a matter of fact, no documentary proof was offered that the wear- of such garb, while working is mandated.
>
> 2. The wearing of Sunni Muslim Dress is a form of proselytizing and could have a harmful effect on narcotics addicts under confinement.

This decision was affirmed by the Appellate Division (App., infra, p. 51A) without opinion. Petitioner appealed to the Court of Appeals once again as a mattter of right and that Court finally dismissed the appeal sua sponte in an order of October 19, 1976, "upon the ground that no substantial constitutional question is directly involved," (App., infra, p. 54A).

The constitutional questions were raised in Mr. Abdush-Shahid's original petition filed in the Westchester County Supreme Court (page 8-9 of Record in Court of Appeals; App., infra p. 21A) and were reviewed at each stage of the proceeding on appeal.

REASONS FOR GRANTING THE WRIT

I. THE DECISIONS OF THE NEW YORK COURTS CONFLICT WITH DECISIONS OF THIS COURT FORBIDDING DETERMINATIONS OF MATTERS OF RELIGIOUS BELIEF BY SECULAR COURTS.

The decisions of the New York Courts in this case are in conflict with the long line of decisions in this Court which forbid secular courts to make determinations of questions of religious doctrine, upon the ground that such determinations contravene the Establishment Clause of the First Amendment. Those cases, Presbyterian Church v. Hull Memorial Presbyterian Church, 393 U.S. 440 (1969); Md. and Va. Eldership of the Churches of God v. Sharpsburg Church, 396 U.S. 367 (1970); Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), involved factional or schismatic struggles for control of church property, the resolution of which tended to implicate decisions upon matters of doctrine. In the most recent decision, Serbian Orthodox Diocese v. Milivojevich, __U.S.__, 96S. Ct. 2372 (1976), this Court decided that secular courts

should not be permitted even to determine whether an ecclesiastical decision is "arbitrary", holding that such an analysis

> "must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly require the church adjudicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits . . ."__U.S. at__, 96 S.Ct, at 2382.

The inquiry and decision made by the New York courts in this case similarly entailed what the First Amendment prohibits, in ways which present novel and important questions for this Court.

The Court of Appeals' first memorandum decision, in stating that "it does not appear with certainty that petitioner could not have obtained a religious dispensation" (App., infra p. 19A) (emphasis added), invited a decision upon a doctrinal question. Following that signpost, even though the evidence was conclusive and uncontradicted that the petitioner was required to wear his traditional Muslim garb, and that no exceptions could be made by reason of employment requirements, the trial court found, and the appellate courts in effect affirmed, that the petitioner had failed to use an available avenue to obtain a special dispensation.

This venture into the thicket of religious doctrine, while not distinquishable in principle from the line of decisions in the church property cases, has broad implications for the religious freedoms of employees. It is as though, in Sherbert v. Verner, 374 U.S. 398 (1963), where this court held that no substantial state interest justified denying unemployment benefits to a Seventh Day Adventist, the courts had ruled that the petitioner was obliged to seek a dispensation from her church to work on Saturday, even though her spiritual leaders had already ruled that such a dispensation was not available. cf. also Cummins v. Parker Seal Co., 516 F.2d 544 (6 Cir, 1975) aff'd by an equally divided court__U.S.__, 97 S.Ct. 342 (Nov. 2, 1976)

The present case illustrates poignantly some of the evils of secular interference in matters of doctrine. The New York courts' insistence that a dispensation was available, when Mr. Abdush-Shahid's spiritual leader said it was not, would oblige Mr. Abdush-Shahid somehow to supersede his spiritual leader. It would oblige his spiritual leader to demean his religion by making a request which he believed fruitless and against his laws. Such secular compulsion is the essence both of the establishment of religion and of infringement of religious freedom. In the language which this Court has repeatedly quoted from Watson v. Jones, 13 Wall. 679, 728 (1872) "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

The decisions of the New York Courts cannot be justified as a ruling merely that Mr. Abdush-Shahid was required to prove that he could not get a dispensation. Such an interpretation would require the petitioner and adherents of his Mosque to reach outside their beliefs for confirmation of those beliefs and would put the secular courts in the position of choosing the correct belief. As this Court said in United States v. Ballard, 322 U.S. 78 (1944), a prosecution for fraud by a religious sect,

> "Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others . . . ."322 U.S. at 86-87.

In this case, the secular courts not only required "proof" of a matter of belief, but chose a particular doctrine that facilitated a decision in favor of the secular dress code.

II. THIS CASE PRESENTS IMPORTANT QUESTIONS UNDER THE FIRST AND FOURTEENTH AMENDMENTS

Behind the issue of the intervention of the secular courts into matters of doctrine, lies the problem of the conflict between petitioner's religious beliefs and the respondent's dress regulations. This is not a case like Kelley v. Johnson, 425 U.S. 238 (1976), in which personal preference for a particular appearance could be overcome in the case of uniformed police. In this case, there being no required uniform for the civil service job, and the petitioner's clothing being mandated by religious belief, there is a direct conflict between a civilian dress code and religious freedom.

Such religious dress requirements, to show piety or modesty, are not unusual in religious history. It is not a long journey from the refusal of plain William Penn, the Quaker, to remove his hat in the presence of the court in the seventeenth century, to the Chasidic Jews of the present day. The conflict between religion and government employment exemplified by this case is a typical one that nevertheless has never been squarely resolved by this court.

In a case analogous to this, Sherbert v. Verner, supra, this Court resolved a conflict between the unemployment compensation laws and a religious obligation to rest on Saturday by holding that infringement of the religious obligation could be justified only by a "compelling state interest" for

which there "was no alternative form of regulation" 374 U.S. at 406-407. The New York courts did not bring to the justifications for the dress code advanced by the state that degree of scrutiny implied by a requirement under the First Amendment that the code be drawn with "precision", NAACP v. Button, 371 U.S. 415, 438 (1963), to advance only a compelling state interest. Witnesses for the respondent narcotics control agency purported to base their dress code upon a "rational authority" theory of treatment, according to which the Narcotics Correction Officer should convey an image of stability, security and responsibility. They could not say, on the one hand, that Mr. Abdush-Shahid's traditional garb failed to convey that impression, or on the other that the "rational authority" theory of treatment was more successful than any other. Their witnesses in fact admitted that all sorts of treatment programs, including less authority-centered ones, were funded by the same agency. It was here in particular that the proof failed with respect to a less drastic alternative.

No rationale was advanced for not transferring the petitioner to one of the programs which operated on a different model, or indeed for refusing to give him one of the discretionary exceptions under the regulations, other than the explanation that his garb was religious. Singling out religious garb for disciplinary action, as the dress code of the respondent does (App., infra, p. 6A), while permitting exceptions for other parts of the code, creates a denial of equal protection of the laws for one particular mode of expression. Chicago

Police Dept. v. Mosley, 408 U.S. 92 (1972).

It was in this context that the New York courts were driven to hold that "the wearing of Sunni Muslim dress is a form of proselytizing and could have a harmful effect on narcotics addicts under confinement". (App., infra, p. 50A) The first phrase embodies a finding that the mere wearing of religious garb by an individual employee, not in a supervisory capacity, itself advances religion impermissibly, even when there is no charge of overt preaching. That finding presents a substantial question under the First Amendment. See Sherbert v. Verner, 374 U.S. at 409-410 (1963).

The second phrase embodies a weak finding that the effects of the traditional garb may be harmful, presumably made because no more compelling interest was advanced. It is an example of that "undifferentiated fear or apprehension of disturbance" that this Court found inadequate to justify an infringement on the expression of belief by the wearing of a black armband in Tinker v. Des Moines Ind. Comm. School Dist., 393 U.S. 503, 508 (1969).

Both phrases raise questions important for public employment and other government largesse. It is a serious infringement of religious freedom if the state may justify penalizing bare acts of piety by branding them as "proselytizing" or by prophesying that they "may have harmful effects."

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the decision of the New York Court of Appeals.

Respectfully submitted,

Paul G. Chevigny
Alan H. Levine
New York Civil Liberties Union
84 Fifth Avenue
New York, N.Y. 10011
(212) 924-7800

Melvin L. Wulf
Joel M. Gora
American Civil Liberties Union
22 East 40th Street
New York, N.Y. 10016
(212) 725-1222

Attorneys for Petitioner
Luqman Abdush-Shahid

APPENDIX

RESPONDENT'S DRESS CODE I

FACILITY POLICY AND PROCEDURE MANUAL

NACC Item 22

Facility Staff Dress and Grooming

10/29/68 Page 1

Facility directors may make reasonable and specific rules and regulations as to the dress, grooming and deportment of their staff. The following factors may be considered in promulgating such rules and regulations:

1. Treatment requirements

2. Security requirements

3. Nature of the position

4. Whether the position requires contact with residents

5. Whether the position requires contact with the public

6. Whether position requires leaving facility (court, hospital, etc.)

Among the rules that the directors shall promulgate pursuant to the above guidelines are the following:

a. All male personnel shall wear a business shirt, jacket and tie except where the director specifically excludes individuals because of one of the above reasons. Where climatic conditions so indicate, the director may waive the wearing of jackets.

During the summer, the director may also waive the wearing of ties.

b. All female personnel shall wear a dress or a skirt and blouse. Slacks and shorts are prohibited except where the director specifically excludes individuals because of one of the above reasons.

c. All personnel shall be clean, neat and well-groomed. This means that male personnel shall not allow their hair to grow to an undue length.

RESPONDENT'S DRESS CODE II

FACILITY POLICY AND PROCEDURE MANUAL
NACC Item 22

Facility Staff Dress and Grooming
10/1/72 Page 1

The following is the policy of the Commission with respect to staff dress and grooming as contained in the official Rules and Regulations of the Commission Part 2018.

Section 2018.1 Statement of Purpose. The Commission has in its care persons, who by court order, are required to be physically contained for treatment for extended periods of time. During such periods, such persons are isolated from many of the emotional outlets that might otherwise be available to them. It is important, therefore, that great care be taken to meet all the physical and emotional needs of persons committed to the care of the Commission.

The Commission has determined that staff attire serves multiple functions in such a setting. Clothing for both males and females should be attractive and pleasing to the wearer and those with whom he associates (both co-worker and rehabilitant). It is important that staff have sufficient flexibility for individual expression in the selection of clothing. It is essential, however, that staff attire, to the extent possible, should enhance rather than disrupt the treatment setting. Therefore, it is necessary to establish and

promulgate an appropriate dress code which also recognizes the anti-therapeutic effect that overly revealing clothing may have on persons committed to our care for treatment. This code is also intended to provide standards which are sufficiently clear so as to avoid conflicting interpretations from place to place among the various treatment facilities and to provide staff with an adequate range of individual selection in respect to dress and grooming. Such freedom of individual selection, however, should not be so uninhibited as to impose on rehabilitants any of the religious, political or other views or beliefs that staff members may hold, or otherwise tend to disrupt the rehabilitative process.

Accordingly, to meet the needs and purposes inherent in this statement of purpose, the Commission has determined to establish, adopt and promulgate a "Facility Staff Dress and Grooming Code".

2018.5 DEFINITIONS. As used herein:

(a) "Facility" shall mean and include any building or part thereof wherein the Commission provides care, treatment or services, for any narcottic addict.

(b) "Staff" shall mean and include all personnel employed by or assigned to perform duties at a facility.

2018.10 APPLICABILITY

Nothwithstanding the specificity of standards for any particular staff class, the following standards shall apply to all facility staff.

(a) Religious attire. Only staff members employed as Chaplains may wear clothing indicative of religious belief or affiliation.

(b) Clothing. Clothing shall be clean and neat.

(c) Shoes. All employees shall wear shoes which must be securely fitted to the foot. Thong-type sandals, sneakers, and other types of athletic shoes shall not be worn on duty, unless otherwise permitted in this code.

(d) No provision of this dress and grooming code shall be deemed to limit clothing worn while not on duty and not on the premises of any facility.

2018.15 CLOTHING STANDARDS.
The clothing standards prescribed herein shall be observed by the respective classes of staff hereinafter specified.

(a) Professional, supervisory and office personnel.

(1) As used herein, the term "professional, supervisory, and office personnel," shall include, but not be limited to directors; assistant directors; narcotic correction chief officers; counselors; teachers; psychologists; narcotic aftercare officers; stewards or senior business management assistants; clerks and stenographers.

(2) The general standard of attire for all male personnel in this class is a business suit, or sport jacket and trousers, a dress shirt and tie. However, this does not mandate that such attire shall be worn at all times. Staff may use their discretion in deviation from prescribed clothing for purposes of comfort and in dealings with residents so long as attire is in good taste.

(3) Female personnel in this class may wear a dress or skirt and blouse or sweater, or pant suit

of their choice. Skirts and dresses should be no longer than the top of the instep or no shorter than the mid-point of the thigh. Pant suits should be interpreted to include matching or contrasting slack outfits which are in general conformity with the above. The overall costume effect should be opaque.

(b) Medical and nursing services staff. Medical services staff shall be governed by the standards applicable to professional, supervisory and office personnel.

(c) Recreation staff. Recreation staff shall be governed by the standards applicable to professional, supervisory and office personnel, except that gym suits, sneakers, gym shoes, or bathing suits shall be worn, as appropriate, when such staff persons are assigned to indoor or outdoor sports, or swimming pool areas.

(d) Maintenance staff and motor vehicle operators. Maintenance staff and motor vehicle operators may wear

clothing suitable to the job assigned.

(e) Vocational instructors. Vocational instructors shall be governed by the standards applicable to professional, supervisory and office personnel staff, except that when working in vocational shops, coveralls or shop aprons and other protective covering may be worn.

(f) Narcotic correction officers.

(1) As used herein, the term "narcotic correction officer" shall also include narcotic correction charge officer and narcotic correction supervising officer.

(2) All male narcotic correction officers shall, while on duty, wear a dress shirt, tie, and full length slacks or trousers. Ties are optional with the employee during summer months.

(3) All female narcotic correction officers may, while on duty, wear a dress or blouse (or sweater) and skirt, or pant suits of their choice. Skirts and dresses shall be no longer than the top of the instep or no shorter than the mid-thigh. The overall costume effect should be opaque. Pant suits should be interpreted to in-

clude matching or contrasting slack outfits which are in general conformity with the above.

(g) Warrant and transfer officers. Except in those instances when a warrant and transfer officer is performing investigative duties, such employee shall observe the standards applicable to narcotic correction officers.

2018.20 GROOMING STANDARDS. Page 4

(a) All facility staff should be neat and clean about their persons.

(b) Hair and beards.

(1) No staff member shall be prevented from wearing a moustache and/or a beard. Hair and beards of male staff shall be clean and neatly trimmed. A moustache, if worn, shall be neat. Hair shall not extend beyond the collarbone. If worn in such a style, including the "afro", that the hair stands away from the scalp, it shall be kept trimmed to a length which shall not exceed four inches. Beards shall be no longer than five inches from the point of the chin.

(2) The hair of female staff shall be clean and all hair

styles, including the "afro", shall be fashioned in such a manner as to remain well groomed throughout the duty shift.

2018.25 ENFORCEMENT.

(a) Supervisory staff should apply these standards with concern for the individual staff member. In extreme cases where disciplinary action is contemplated, supervisors shall first consult facility directors prior to any such indication to staff. Initiation of formal disciplinary action against a staff member, arising from violation of this code, shall have prior approval of the first deputy commissioner or his designee.

(b) The director or his designee shall have the authority to exclude from the facility any commission employee, not subject to this code, including those assigned to central administration offices, whose dress and grooming is not in substantial conformity with this code. A report of such exclusion shall be forwarded at once to the supervisor of the employee so excluded. Copies of such reports are to be sent to the office of personnel and to the office of the commission counsel.

(c) Deviations from these rules, other than as already indicated above,

may be permitted upon prior written approval by the first deputy commissioner. Variations shall be limited to situations which tend to conform to: treatment requirements; security requirements; medical requirements; duties of a specified position including but not limited to contact with residents, public or judiciary; geographical and climate conditions.

HEARING OFFICER'S DECISION

To: John W. Randall, Director of Personnel, Narcotic Addiction Control Commission.

By your letter of designation made part of the record herein, the above entitled matter was referred to me to hear and report with recommendations.

Transmitted with the record herein consisting of the following:

Transcript of the hearing.

Exhibit 1. Document
Exhibit 2. Designation of Mr. Cappeli
Exhibit 3. Designation of Mr. Ruffolo
Exhibit 4. Letter to Respondent from Director Wood
Exhibit 5. Letter to Respondent dated 8/9/71
Exhibit 6. Letter to Respondent dated 8/21/71
Exhibit 7. Respondent's Answer
Exhibit 8. "Facility Policy and Procedure Manual"
Exhibit 9. Two page document
Exhibit 10 NAACC column (Summer/1971)

The Commission charges that the respondent was justly suspended because of unauthorized manner of dress in violation of the "Facility Policy and Procedure Manual".

The Respondent contends that his garb is a religious mandate, and to restrict him in the wearing thereof is in violation of the Constitution.

ANALYSIS OF TESTIMONY

As to the issue of unauthorized dress, I find credible and do believe that respondent did in fact wear religious garb while in the course of his duties in violation of the NACC Manual, and the Director Wood's wishes.

I further find credible and do believe that respondent wore his garb in good faith, and in the belief that he is religiously obligated to do so.

FINDINGS OF FACT

That respondent reported to work on July 13, 15, 16, 17, 18, 19, 20, and 21 dressed in a robe like garment of ankle length.

That respondent was in violation of the "business shirt and tie" provision dictated by the "manual" and his Director.

That respondent was ordered to conform with the "dress code", but refused.

RECOMMENDATIONS

Respondent's counsel ably points out the conflict inherent to the NACC restriction on dress, and the rights and priviliges safe (sic) guarding the individual contained in the United States Constitution.

Commission's counsel on the other hand set forth the test, I believe must govern in this and similar matters involving such conflicts; to wit: where the conflict arises in individual rights with matters of state or governmental necessity, then the individual's

rights must be violated and the common good preferred.

It is my recommendation that the respondent obtain special dispensation from his religious sect to discontinue wearing garb at work in violation of the NACC code or wear same under authorized garb, and should this be made possible, then and in that event, I believe that respondent should be censored only.

It is my feeling that the right to control and or restrict the dress of state employees who are employed in the care and treatment of residents of NACC facilities is beyond argumentation. Should respondent continue to defy the dictates governing attire while at the facility in which he is employed, then I would unhesitatingly recommend his dismissal.

Respectfully submitted

HERCULES E. RUFFOLO,
Hearing Officer.

FIRST OPINION OF SUPREME COURT
WESTCHESTER COUNTY

CERRATO, J.

In this Article 78 proceeding, petitioner seeks a judgment vacating the finding of his misconduct, and directing the respondent New York State Narcotics Addiction Control Commission to reinstate the petitioner with full pay and enjoining the respondent from enforcing its dress code.

On or about October 29, 1968 respondent duly published a regulation in which, among other things, all male personnel were directed to wear a business suit, jacket and tie while on duty.

Petitioner entered the employ of New York State Narcotics Addiction Control Commission in July, 1969. Petitioner is a member of the orthodox Muslim faith, styled a Sunni Muslim and has been a participant in that faith since September, 1969. As a member of his faith, he is required to wear "Sunni dress" including a Biadlia, or long caftan, and a skull cap. In addition, petitioner alleges that he is forbidden to wear a necktie or other confining garments.

In July 1971, petitioner was permanently assigned to Ridge Hill Rehabilitation Center, Yonkers, New York. The Director of the said Center refused to permit the petitioner to work in his "garb". Accordingly, on July 21, 1971, petitioner was suspended from his employment. Subsequent thereto and on August 9, 1971, the petitioner was formally charged pursuant to Section 75 of the Civil Service Law and

On September 2, 1971, a hearing was held thereon. Petitioner was found guilty of the charge that he willfully violated the "dress code" and was dismissed from service as of November 26, 1971, provided that if the petitioner conformed to the dress code prior to November 26, 1971, then

> "...the punishment imposed herein be rescinded, and in lieu thereof there be substituted as punishment a suspension without pay to be concurrent with the two 30 day administrative suspensions without pay already completed..."

This Court, after a careful consideration of the papers submitted hereon, is of the opinion that the dress code promulgated by the respondent was reasonable and that its actions with respect to the petitioner were not arbitrary or capricious and did not violate any of the petitioner's constitutional rights.

Accordingly, the petition herein is dismissed.

Dated: White Plains, New York
June 8, 1972

ANTHONY J. CERRATO
Supreme Court Justice

FIRST DECISION OF
APPELLATE DIVISION SECOND DEPARTMENT

In the above entitled cause, the above named Lugman Abdush-Shahid, petitioner, having appealed to this court from a judgment of the Supreme Court, Westchester County, dated July 24, 1972; the said appeal having been argued by Paul G. Chevigny, Esq., of counsel for the appellant, and by Mortimer Sattler Esq., of counsel for the respondent, due deliberation having been had on said appeal, and upon this court's decision slip heretofore filed and made a part hereof, it is:

ORDERED that the judgment appealed from is hereby unanimously affirmed, without costs.

Enter: IRVING N. SELKIN
Clerk of the
Appellate Division

MEMORANDUM DECISION OF
THE COURT OF APPEALS

It does not appear with certainty that petitioner could not have obtained a religious dispensation to accommodate his clothing to the requirements of his superiors under the dress code. Nor does it appear that the clothing requirement by the agency was justified by the needs of the facility or petitioner's duties sufficient to override a religious sentiment sincerely held. On this view the Court does not find it appropriate to reach the issue which would be present if there had been an irreconcilable conflict between the requirements of petitioner's religion or the facility. The proceeding should be remitted in order to explore the reasonable availability of the religious dispensation and if not available, then whether the needs of the facility justify overriding the religious mandate.

* * * * * *

Order modified, without costs, and the matter remitted to Special Term for further proceedings in accordance with the memorandum herein, and, as so modified, affirmed. All concur.

SUPREME COURT OF THE STATE
OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of LUQMAN ABDUSH-SHAHID,	:	
Petitioner,	:	
-against-	:	Index No. 1586/72
NEW YORK STATE NARCOTICS ADDICTION CONTROL COMMISSION,	:	
Respondent.	:	

TRAINOR, J.

The petitioner, until November 19, 1971, had been employed as a Narcotics Rehabilitation Officer by the New York State Narcotics Addiction Control Commission (NACC), and in July, 1971, was permanently assigned to Ridge Hill Rehabilitation Center in Yonkers, New York.

The petitioner claims to be an orthodox Muslim and a member of a sect known as Sunni Muslim. Petitioner asserts that the tenets of his faith require him, at all times, to wear "Sunni Muslim dress" which includes a Biadlia, or long Kaftan, (a Dashiki) and a skull cap. His faith, he says, forbids the use of neckties or

other confining garments. He says he consistently wore his Sunni Muslim garb at his earlier place of employment by NACC but that when he was transferred to Ridge Hill the Director at that place refused to permit him to work so attired and, upon petitioner's refusal to change his mode of dress, he was suspended. Formal charges were preferred and on September 2, 1971, after a hearing, the Hearing Officer found that the petitioner's garb violated the NACC dress code, whereupon the petitioner was dismissed.

Thereafter, and on or about February 8, 1972, the petitioner instituted an Article 78 proceeding for a judgment vacating the Hearing Officer's finding of misconduct on the grounds that the dismissal was arbitrary and capricious; that petitioner's rights under various sections of the United States and New York State Constitutions were violated, including his rights to freedom of religion, freedom of expression, due process of law, privacy and equal protection of the law. Special Term (Cerrato, J.) dismissed the petition and the Appellate Division, Second Department, affirmed. Upon appeal to the Court of Appeals the matter was remitted to Special Term with the following Memorandum:

> "It does not appear with certainty that petitioner could not have obtained a religious dispensation to accomodate his clothing to the re-

quirements of his superiors under the dress code. Nor does it appear that the clothing requirement by the agency was justified by the needs of the facility or petitioner's duties sufficient to override a religious sentiment sincerely held. On this view the Court does not find it appropriate to reach the issue which would be present if there had been an irreconcilable conflict between the requirements of petitioner's religion or the facility. The proceeding should be remitted in order to explore the reasonable availability of the religious dispensation and if not available, then whether the needs of the facility justify overriding the religious mandate.

Order modified, without costs, and the matter remitted to Special Term for further proceedings in accordance with the memorandum herein, and, as so modified, affirmed. All concur."

As directed by the Court of Appeals, a hearing was held at Special Term, Part III of this court where both sides presented witnesses. A transcript of the hearing proceedings consists of 458 pages; the first 75 pages are devoted to the question of a possible religious dispensation and the remaining 383 pages involved the question as to whether or not the dress

requirement was justified sufficiently by the needs of the facility to override a sincerely held religious sentiment.

The petitioner offered Koli Ahmad Tawfiq as a witness. Mr. Tawfiq is the Imam (Spiritual Advisor) to the Mosque of Islamic Brotherhood, Incorporated. The Mosque is operated by the Sunni Muslims which, according to Mr. Tawfiq, is the only orthodox Islamic sect. His Mosque owns two buildings and, in addition to operating the Mosque, runs several business including a herbal tea house, a health food store, a newspaper, and also a school. Mr. Tawfiq receives no salary but subsists on contributions; he does not file an income tax return. When asked what were the dress requirements of the Sunni Muslims he replied (T.10):

"With regards to the male, the individual must be covered and concealed at all times from the navel to the knee. All of the clothing is to be loose, not leaving any impression of the private area to be visible, and comfortable and conducive to the performance of prayer five times a day wherever he may find himself."

The wearing of a necktie and a business suit would not accord with his religion's tenets. When asked for his reasons for so stating he said (T.11):

"Well it would interfere with his circulation, perhaps, and also interfere with his perfor-

mance of prayer and performance of ablution before prayer. Ablution is the washing before engaging in formal active worship that every Muslim engages in."

(T.12): "Q. From whence do you believe within the tenets of your religion that this doctrine with relation to dress is derived?

"A. It is derived from a tradition and practice of the Holy Prophet Mohammed Iman Abdullah who is credited with being the founder of the religion of Islam.

"Q. Are there any provisions in any religious document with relation to it?

"A. There is. However it is interpreted from the Holy Koran."

(T.13): "Q. Is there any occupation or job for which you would make an exception with relation to the requirements of your religion that this particular garb be worn?

"A. No sir, I would not."

"Q. If you found that the employer could not be induced

to change the clothing requirements or permit the person to wear the required garb, would you make an exception?

"A. No, sir, I would not."

When pressed for some written authority which required wearing a prescribed dress, Mr. Tawfiq read from an Arabic version of the Koran.

(T.32): "Q. Just give us the one or two sentences that deal with this.

A. It says, Chapter 7, Verse 26, 'Oh ye children of Adam, we have bestowed raiment upon you to cover your shame as well as to be an adornment to you, but the raiment of rightousness is the best. Such are among signs of God that they may receive admonition----."

(T.36) "BY THE COURT: Mr. Witness, there isn't anything specifically in the Koran which says that the particular type of garb that you're wearing now must be worn, in words?

A. Your Honor, if I may, the reason that they have the Arabic here is because when something is translated a lot has to be lost. It's almost like paraphrasing."

Q. A lot is lost in transla-

tion; I agree with you there. Do they describe anything beyond the general translation of clothing and shame? Do they describe the kind of clothing you have to clothe yourself in in the Koran?

A. No, sir. That is in the book called the Hadith.

Q. Have you got that with you?

A. No, sir, I do not have that with me.

Q. What is the Hadith?----.

A. The Hadith is the book of practices of the Prophet Mohammed.

Q. Does that describe the garb that you're talking about?

A. It describes various garbs that include the one I'm wearing.

Q. Well I understand that this is the only type of garb that you're permitted to wear.

A. You can wear longer robes, etcetera. It can be this or---- as long as the area that I mentioned ---- is sufficiently covered, then the garb can be longer, but it cannot be shorter."

Other than the word of Mr. Tawfiq, and the petitioner, no proof was offered of the alleged rigid clothing requirement. There is, admittedly, no such mandate

in the Koran and, although the hearing extended over several days, the Hadith, in which, allegedly, such requirement appears, was never presented to the court.

With respect to the question of a possible dispensation, the following dialogue with Mr. Tawfiq appears:

(T.58): "By The court; Who, if anybody, in your religion has the right to grant a dispensation?

A. That would have to be taken back to Mecca, Saudi Arabia.

Q. As Imam, you would not have the right?

A. No sir, I could not give a dispensation.

Q. It would have to go----

A. To the authorities at Mecca, Saudi Arabia.

Q. Is your organization recognized by Mecca in Saudi Arabia?

A. Yes, Sir.

Q. Who, in Mecca or Saudi Arabia would have to be consulted or would it be a group?

A. Primarily, it would go through channels. It might go from an individual who is called a Mufdy, and a Mufdy is something like a Supreme Court Judge, and then

from the Mufdy to a Grand Council and from a Grand Council to the King of Saudi Arabia who is considered the Imam of the Faithful of all Muslims.

Q. And he and only he is the one who could ultimately grant a dispensation?

A. Yes, Sir."

(T.59): "Mr. Sattler: Well, wouldn't it be appropriate for you in the hypothetical situation I gave to you where a man is desperate and he hears there's a chance for him to get a job for you instead of giving him the speech you just told us, to say "I'll try to see if I can't get a dispensation from the King of Saudi Arabia?"

A. No sir, it would not.

Q. Would you rather see him starve?

A. You just can't refer any type of question. They go through channels and they are worthy of his perusal."

"BY THE COURT: The purport of the question was, would you put through channels to see if you

could get him a dispensation?

A. No sir, it would not be necessary.

Q. It would not be necessary?

A. No, sir. A situation like that would not necessitate putting that through channels to get a dispensation.

Q. Why do you say that? If only one person can grant a dispensation, are you saying they would't even consider it?

A. I'm saying that the Imam is qualified to handle that type of situation.

Q. You say you don't have the power to dispense.

A. Let me see if I can explain it.

Q. Now as I understand Mr. Sattler, as I understand the question, if one of the members of your Mosque came to you and said, 'there is an opening for a mailman, I'm unemployed. I've walked my feet off all over the city and there is not a job to be had. I can get this job provided I wear the uniform which is required to be worn. If I don't get the job my wife and ten children are going to starve.'

Is there any way you could get a dispensation?

A. No, sir, not that I know of. In that situation I don't think so. A situation like that would give --- if that were put through channels it would more than likely become the responsibility of the Islamic officers to try to take care of this individual as opposed to ---.

Q. To see that he didn't starve?

A. Yes, sir."

(T.61): "Q. So, in other words, a member of your religion is automatically barred by virtue of being a member of your religion from any kind of job that requires the wearing of a uniform? ---."

A. No, sir, that's not right.

THE COURT: Well, who can grant him permission to wear a uniform.

THE WITNESS: Well, it all depends upon the uniform. There may be a uniform made to suit the Islamic style of dress.

THE COURT: Well, let's confine it then to the uniform prescribed for the military of the United States, the uniform prescribed for firemen, the uniform prescribed for a mail carrier or the

uniform prescribed for a policeman. Is he automatically prohibited from wearing any such uniform?

THE WITNESS: As they are presently designed, yes, sir.

THE COURT: Yes, as they are presently designed. In other words, you say they have to conform to your type of uniform or dress in order for them to be eligible?

THE WITNESS: Yes, sir".

In summary, then, although there are channels set up in the Sunni Muslim faith for relaying requests for a dispensation to the King of Saudi Arabia; and even though the King of Saudi Arabia has the power to grant a dispensation; the Imam refused to put a request for a dispensation through channels. The Imam was adamant in his position. Such obduracy can hardly be attributable to the unapproachability to the King of Saudi Arabia since it is a matter of common knowledge that the King permitted an audience even to the most humble suppliants; in fact it was the holding of such an open court which permitted his easy assassination. It is interesting to note that although the Imam (Mr. Tawfiq) is acknowledged to be the interpreter of the faith in the Mosque to which the petitioner belongs, the petitioner averred, under oath, that even if such a dispensation were granted by the Imam, he would refuse to recognize it since, under such circumstance,

he feels that the Imam would be violating the Islamic law. Despite what the Imam might say, the petitioner would himself interpret the Koran.

Next, as to whether the needs of the facility justify overriding the religious mandate. I think this second question is only relevant in a situation where either there is no provision in the religion for a dispensation or where there is, but a dispensation has been refused. As we have seen such is not the situation here. There is a provision for dispensation but there has been a refusal to request one and, even if granted (by the Imam) it would be refused by the petitioner.

However, the proof on the second point was as follows: The petitioner presented six (6) witnesses in addition to himself: Dr. Thomas Litwack, a 32 year old holder of a Ph.D in Clinical Psychology and an attorney; Dr. Stephen Teach, a Psychiatrist; James Daniel, Director of Security, Fire and Safety at Lincoln Hospital; Dudley Edward Morris, a Management Consultant; Robert Phipps, a Narcotics Correction Officer; Larry Carson, a student and former inmate of Ridge Hill; Reverend Stephen Chinlund, an Episcopalian minister and former head of several narcotics facilities' and Edwin Morris, a part-time teacher at Ridge Hill. The respondent offered two witnesses, Raymond Bara, the present director of Ridge Hill, and Dr. Seymour Joseph, Deputy Director of Methadone and Pharmaceutical Control for New York State.

Raymond R. Bara, Director of Drug Rehabilitation Facilities, is employed by the New York State Drug Abuse Control Commission, and is in charge of Ridge Hill. Mr. Bara has a Bachelor's Degree from New York University with a major in psychology, and a Master of Science Degree from Columbia University in psychiatric social work. He began social work in May, 1956 after training at Brooklyn State Hospital. From 1956 to 1962 he was employed as a psychiatric social worker and senior social worker at Brooklyn Aftercare Clinic and Brooklyn State Hospital. In 1962 became senior social worker in Pilgrim State Hospital in a research unit. In 1963 became Supervisor of Social Work at Bronx State Hospital. In 1967 was Director of Counseling Service for the then Narcotics Addiction Control Commission until 1970 when he became Director of Cross Bay Methadone Treatment Center. In 1971 Director of Edgecombe Rehabilitation Center, and in 1973 was named Director of Ridge Hill. His experience with narcotics addicts extends from 1955 to date, twenty years, with an extensive involvement since 1963. (T.78, 79). Regular religious services are provided for the residents - Protestant, Catholic and Jewish; Minister Farrigan of the Black Muslim faith was invited to participate but did not respond. (T.81). There is no objection to members of staff performing their religious practices provided they do not interfere with their duties; he would expect such practices to be conducted privately, in a chapel or other secluded area. It could be arranged for Mr. Shahid to pray at certain times,

in private. (T.87).

After reciting his observations and experience with drug addicts, Mr. Bara states that the relationship between the staff personnel and inmates is the primary instrument for rehabilitation, and dress is an important factor (T.91, 92 et seq.).

(T.96-97): "Q. From your observation, can you tell us whether religious dress has any effect, emotional or otherwise, on the residents?

A. Yes, sir, very definitely. Our Chaplain wears religious dress with a very specific purpose in mind. They are performing formal ministry, therefore, are identified by the residents as representatives of that particular faith.

I believe that any dress out of the ordinary as prescribed by the dress code would have some sort of effect upon the residents and I would say that it might have a disturbing effect upon the residents in that particular setting." (Objection) ---

THE COURT: "Let's confine it to the dress worn by the petitioner. What is your opinion with respect to the dress worn by him. What

effect, if any would it have?---."

THE WITNESS: "I believe and, in fact, I more than believe, I'm certain that Mr. Shahid would be identified as a representative of his particular faith; and I believe that this identification would very seriously interfere with the residents' perception of Mr. Shahid as a narcotic correction officer who also has a therapeutic function, in fact, a formal therapeutic function." (Objection overruled)

Upon cross-examination by Mr. Chevigny, the following ensued: (T.99 et. seq.)

"Q. What formal courses in psychology have you taken?

A. I have at least 35 credits, perhaps more, in undergraduate psychology, psychology of personality, growth and development, child psychology, psychological systems, basic psychology or introduction to psychology, abnormal psychology on the graduate level.

On the graduate level I've had courses in psychotherapeutic systems, psychoanalysis, behavioral

anomalies, the psychological problems of families.---

Q. Did any of these courses deal with the effect of unconventional dress on former addicts?

A. In part.

Q. How?

A. These courses did to a certain extent deal with the type of pathology, character deficit, and so forth which I described earlier.

By inference it then becomes apparent that an individual who is beset with these types of defects, emotional stresses, et cetera, and who is confronted by dress of an unconventional or stimulating nature is going to respond characteristically or accordingly, not necessarily as you or I would.

Q. You say by inference. On what do you base that inference?

A. ---- on the nature of the pathology with which we're dealing. That by definition will give rise to certain kinds of behavioral patterns.

Q. How do you know that?

A. I know that primarily by observation.

Q. Observation of what?

A. Observation of drug addicts or drug dependent individuals in various settings, including their homes, community, institutional settings, after-care settings, prisons and mental hospitals.

Q. Have you ever had a person who wears this garb work for you?

A. Yes, sir. --- Safir El-Quhir.

Q. Where was that?

A. He is currectly a narcotic correctional officer at our facility at Ridge Hill.

Q. Does he wear this garb?

A. He does not wear this garb on duty. He wears this garb prior to assuming his post. He changes into what we would consider civilian clothes upon arriving at the facility.

Q. Has he ever worn the garb on the job that you know of?

A. I'm certain he has not, not while on post.

Q. Have you ever heard any comment from a narcotics addict with relation to this garb?

A. I have heard comment to the effect that this represents an Islamic, an individual who is identified or related to the Islamic faith.

Sometimes a remark is made in a, I would say, derogatory fashion.

Q. Concerning muslims?

A. Concerning muslims.

Q. By narcotics addicts?

A. By addicts and at times by staff." ---

(T.113) "There is evidence, and we've experienced this, that there are elements of very strong religious animosity, hostility between various groups of people, not only within the Muslim category, but within the so-called protestant group."

Doctor S. Seymour Joseph, M.D., was an Internist before he turned to psychiatry in 1956. Since that time his activities have been in the field of mental health and narcotics addiction. He is presently Deputy Commissioner of the Office of Methadone and Pharmaceutical Control. His prior positions have been: Clinical Director of Bronx After-Care Clinic of the New York State Department of Mental Hygiene; Assistant Commissioner, in charge of Institution Facilities; Associate Commissioner and then Deputy Commissioner in charge of Special Programs. Before that he was associated with the predecessor, i.e., Narcotics Addiction Control Commission. Doctor Joseph testified that many of the inmates at Ridge Hill would not be affected by the Sunni Muslim dress but that there are many who would. (T.241-242).

"Let me say unequivocally that there are individuals who are being treated in a facility, such as Ridge Hill who would have their level of anxiety heightened to an extremely substantial degree by contact with Mr. Shahid. Now, I am not generalizing and saying that's true of everyone, but there are patients who react in that fashion. That is a reality."

Doctor Joseph testified that he had a primary role in establishing the modus operandi of correction officers years ago, and has written papers pertaining to it. Sunni Muslim dress could generate greater anxiety - would be counter-productive and anti-therapeutic. He said that inmates have told him so. He said that he would not employ a catholic priest with a clerical collar, or a rabbi, or anyone else in clerical attire, as a correction officer. (T.244).

Doctor Litwack is, among other things, a consultant to the New York Civil Liberties Union. He testified as an expert (ipse dixit) on the subject of the validity of predictions made by mental health professionals (T.178-179). He said that he knew of no tests that had ever been conducted for the specific purpose of ascertaining the effect of dress upon persons and that, in the absence of such a test, no one could predict how any particular individual or group will react to stimuli. It was his opinion that if some inmates experienced "anxiety" when exposed to Sunni Muslim garb (as testified to by Dr. Joseph) it could not be proven that they did not similarly react to a shirt and tie. And, in any event, anxiety, rather than being harmful might be therapeutic since an inmate must learn to handle anxiety. (T.293).

Dr. Teach, who has worked with

addicts, corroborated Dr. Litwack that there was no way to predict that Sunni Muslim dress would hamper treatment of addicts because uniformity of appearance is not desirable for therapy. It is especially important for "millieu therapy" (a closed milieu) that there be variety, because inmates had to learn to function in the world again. (Is this possibly a form of predicting?) The Sunni Muslim garb is no more "proselytizing" for inmates than for anyone else (T.196-197,221). He has seen people working in hospitals dressed in both Hasidic and Sunni garb. (T.225) He has been associated with Neighborhood Health Services since December, 1973; finished his Psychiatric Residency in 1971, then spent 6 months in the Army. After testifying that no one can predict how an inmate would react, he immediately predicted that garb would have no effect on an inmate (T.190-191).

> "In order to have some communication with the drug addict, to have leverage to make that change (to give up drugs as a means of problem solving and take up another form of problem solving) there needs to be some kind of identification. Often clothes are a way that can be used to help make some contact with somebody where they are not an essential feature of the

functioning of an individual and can be used as a way of having contact to have the leverage to make changes ---." (T.194) (emphasis added).

Dr. Teach is a staunch libertarian. He believes that any person has an absolute right to use narcotic drugs if he wishes to. And when asked if he felt that the inmates should run the facility he was very emphatic in stating that they should have a say (T.209, 210, 211).

(T.227,228,229) BY THE COURT:

Q. You say that dress has no effect on these - what do you call them, residents?

A. Dress has an effect. Everything has an effect. It's only how that effect is used that makes any difference. Nothing is positive or negative in and of itself. It's only how it's used.

Q. Would it have an effect if a gentleman came in in the dress he's wearing as an enforcement officer, and the next day a man came in, an enforcement officer, with an Indian headdress and says: 'I have Mohawk blood, my religion requires me to wear an Indian

headdress,' and the next day a Scotchman comes in with kilts and says 'I'm sorry, but my religion requires this,' and you have a variety of costumes. Would that affect the residents?"

A. I think it would affect them.

Q. Would they break out laughing?

A. They might at first, and I think how it would work after that would depend on the staff and their togetherness.

Q. Would you recommend it?

A. Yes.

Q. Then you would say that the authorities have no right to prescribe any particular kind of dress?

A. Right. I can't talk about their right. I don't think it makes any psychological sense.

Q. No matter how bizarre the garb may be?

A. Right. ----

Q. You mean the residents run the institution?

A. Not run it, but they participate in running it ----.

Q. When you say 'running', you mean operating?

A. Yes ---."

Mr. Daniel said he had had a Sunni Muslim on his staff as a security guard in an acute psychiatric unit of the hospital, in contact with patients and never heard any complaint about him from anyone.

Mr. Dudley Morris, holder of a B.A. in Political Science, although undoubtedly an excellent Management Consultant, his expertise lies in evaluating programs. His testimony was that he has visited in the "field" and witnessed staff members engaged in therapeutic programs, in informal dress, including some dashikis, and the fact that he knew of no literature about the disturbing affect of clothing, (T.349) made little impression. He does not know Ridge Hill or the kind of person they deal with except generally.

Mr. Phipps, formerly a Narcotics Correction Officer, had worked with petitioner at Sheridan and at Ridge Hill (T.281). He saw petitioner wear his garb at Sheridan and never heard any complaints about it. He said that dress is casual at most facilities and no one is disciplined for not wearing ties.

Larry Carson testified that when an inmate of Ridge Hill, there was a guard praying one night when he (Carson) woke up to go to the bathroom. Obviously this guard worked while the inmates slept and was only seen by Carson fortuitously. He never heard any complaints about the man (T.399-400).

Mr. Edwin Morris teaches English and social studies at Ridge Hill since 1971. He testified that the correction officers wear casual clothing - most do not wear ties. Some wear dashikis (inmates or officers? - he didn't say).

Reverend Stephen Chinlund is an ordained Episcopalian minister who works with drug addicts. He was formerly Director of Taconic Correctional Facility for nine months. Before that he was Director of Manhattan Rehabilitation Center of the Narcotics Addiction Control Commission from 1968 to 1974 appointed by Dr. Joseph, and before that was connected with other institutions. He said that when Doctor Joseph visited the Manhattan Center

facility, he, (Rev. Chinlund) always accompanied him on his visits to patients and he never heard any patient complain to Doctor Joseph about Sunni Muslim attire. He testified that after the dress-code was issued correction officers wore jackets and ties, except in the summer. In the early period, before the dress code, some wore dashikis. He doesn't believe that religious garb is harmful to inmates. Although he is, himself, a clergyman, he doesn't wear his clerical collar when working with inmates because (T.442):

> "---the residents would feel I thought they ought to in some way, adhere to the religion that I was representing by my dress ---" (emphasis supplied)

It appeared that at an earlier disciplinary hearing, involving another individual, both Doctor Joseph and Reverend Chinlund had appeared as witnesses on opposite sides (T.449). At that hearing Doctor Joseph had testified:

> "The NCO has always been just about the most important part of the treatment team in our facilities. He is an individual who represents regional(sic) authority, the do's and don't's, the proper do's and don't's that are able to be communicated

> to individuals who are either lacking in conscience formation or are markedly deficient in such conscience formation. --- he is a coleader and in constant contact and is, in effect, an example to the resident or an example of which one may be or which could be ---. He is an individual who cannot adopt any bizarre or threatening posture in relation to the addict. He is an individual who, in effect, must represent what can be non-traumatic and what can be perfectly acceptable to the individual."

When asked by Mr. Sattler if he (Rev. Chinlund) had, on the record, disagreed with Doctor Joseph when he testified at the same hearing, he said he did not.

In the case of Father Vincent LaRocca, etc., v. Morgan Lane, etc., 47AD 2d 243; aff'd__N.Y. 2d__. Mr. Justice Hopkins, Acting P.J., speaking for the majority of the Court in sustaining the trial court which directed the priest to remore his clerical collar before proceeding to act as attorney at a jury trial, said:

> "The free exercise of religious beliefs has been surrounded by special protection under the First Amendment. Though it is in many ways a kind of personal expression, the intrusion into which by State

action is forbidden, the right of individual worship is not altogether beyond regulation by the State.---. The State Constitution, indeed, states that 'the liberty of conscience hereby secured shall not be contrived as to --- justify practices inconsistent with the peace or safety of this state (N.Y. Cost. Art. I, Sec. 3). --- The Federal standard requires us to find that any incidental burden on the petitioner's exercise of his religion must be justified by a compelling State interest in the regulation of a subject within the State's power to regulate (Sherbert v. Verner, 374 U.S. 398, 403; Wisconsin v. Yoder, 406 U.S. 205, 220). ---. To this should be added the admonition spoken in the Supreme Court decision upholding laws abolishing polygamy that, although laws 'cannot interefere with mere religious belief and opinions, they may with practices' (Reynolds v. United States, 98 U.S., 145, 166).

It should be noted that the petitioner claims that he is under instructions from his bishop to wear his collar and that he fulfills his right of religious worship by doing so in the performance of his duties as an attorney. On the other

hand, it is beyond question that the petitioner's dress is regulated by the court only when he is performing his duties as an attorney in a trial before a jury.---.

On balance, then, we conclude that the petitioner's right to free exercise of religious belief is subject to reasonable regulation ---. This does not mean that he gives up his religious beliefs ---; it does mean, however, that when he enters on secular pursuits he is subject to reasonable regulations in the secular realm ---. Dress is a 'continuing visual communication ---' (People v. Roman, ___NY 2d___ dec. Jan. 20, 1975) ---, and it represents, when attached closely to a concept or mode of life, a symbolism which draws an appropriate response..."

See also In the Matter of Daniel E. Greenwald v. Louis J. Frank, etc., 47 AD 2d 628. See also New York Law Journal, July 30, 1975, front page article entitled: "Muslim Women Lose Bid to change Prison Garb."

Although much of the language employed by the witnesses on both sides was esoteric psychiatric and psychological jargon, I am of the opinion that the credible evidence presented preponderated in favor of the respondents. 1. Procedures to

procure a dispensation from the wearing of religious garb on duty are provided by the Sunni Muslim Order but were not availed of and, as a matter of fact, no documentary proof was offered that the wearing of such garb, while working is mandated.
2. The wearing of Sunni Muslim dress is a form of proselytizing and could have a harmful affect on narcotics addicts under confinement.

This constitutes the decision of the court pursuant to Section 4213 B of the CPLR.

Settle order on notice.

All exhibits are to be picked up at the office of the clerk of Special Term, Part III before the order will be signed.

s/ ROBERT J. TRAINOR

ROBERT J. TRAINOR
J.S.C.

DATED: White Plains, New York
November 10, 1975

SECOND DECISION OF
APPELLATE DIVISION SECOND DEPARTMENT

In the above entitled cause, the above name Luqman Addush-Shahid, petitioner, having appealed to this court from a judgment of the Supreme Court, Westchester County, dated December 11, 1975, which, after a hearing, held pursuant to an order of the Court of Appeals (Matter of Abdush-Shahid v New York State Narcotics Addiction Control Comm., 34 NY2d 538), dismissed the petition;

and the said appeal having been submitted by Paul G. Chevigny, Esq., of counsel for the appellant, and submitted by Mortimer Sattler, Esq., of counsel for the respondent, and due deliberation having been had thereon; and upon this court's opinion and decision slip heretofore filed and made a part hereof, it is:

ORDERED that the judgment appealed from is hereby unanimously affirmed, without costs or disbursements.

Enter:

IRVING N. SELKIN
Clerk of the
Appellate Division

_____A D 2d_____ S - April 19, 1976

588 E

In the Matter of Luqman Abdush-Shahid, appellant, v. New York State Narcotics Addiction Control Commission, respondent.

Paul G. Chevigny, New York, N.Y. for appellant.

Louis J. Lefkowitz, Attorney-General, New York, N.Y. (Mortimer Sattler and Samuel A. Hirshowitz of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the respondent which, after a hearing, dismissed petitioner from his employment as a narcotics rehabilitation officer for his failure to comply with respondent's dress regulations, petitioner appeals from a judgment of the Supreme Court, Westchester County, dated December 11, 1975, which, after a hearing, held pursuant to an order of the Court of Appeals (Matter of Abdush-Shahid v. New York State Narcotics Addiction Control Comm., 34 NY2d 538), dismissed the petition.

Judgment affirmed, without costs or disbursements.

Apecial Term was warranted in reaching the conclusion it did in dismissing the petition.

GULOTTA, P.J., HOPKINS, LATHAM, MARGETT and SHAPIRO, JJ., concur.

May 3, 1976 IN RE ABDUSH-SHAHID V NYS NARCOTICS ADDICTION CONTROL

588 E

COURT OF APPEALS ORDER
OCTOBER 19, 1976

2 Mo. No. 1003 SSD 84
In the Matter of Lugman
Abdush-Shahid,

Appellant,

vs.

New York State Narcotics
Addiction Control Commission,

Respondent.

Appeal dismissed without costs, the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

Supreme Court, U. S.
FILED
MAR 8 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-994

LUQMAN ABDUSH-SHAHID,

Petitioner,

against

NEW YORK STATE NARCOTICS ADDICTION CONTROL COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

BRIEF FOR RESPONDENT IN OPPOSITION TO CERTIORARI

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent
Office and P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-4297/3385

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

ALAN R. SMULEVITZ
Assistant Attorney General
Of Counsel

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-994

LUQMAN ABDUSH-SHAHID,

Petitioner,

against

NEW YORK STATE NARCOTICS ADDICTION CONTROL COMMISSION,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO CERTIORARI

Opinions Below

The decision of the New York Court of Appeals of October 19, 1976, is not reported and appears in the Appendix to the petition, p. 54A. The decision of the Supreme Court of the State of New York, Appellate Division, Second Department, dated May 3, 1976, is reported at 52 A D 2d 846 and appears in the Appendix to the petition, p. 51A. The decision of the Supreme Court of the State of New York, County of Westchester, dated November 10, 1975, is not reported and appears in the Appendix to the petition, p. 20A. The earlier memorandum decision of the New York Court of Appeals is reported at 34 N Y 2d 538, 309 N.E. 2d 872, and appears in the Appendix to the petition, p. 19A.

The earlier decision of the Supreme Court of the State of New York, Appellate Division, Second Department, is reported at 41 A D 2d 803 and appears in the Appendix to the petition, p. 18A. The decision of the Supreme Court of the State of New York, County of Westchester, dated June 8, 1972, is not reported and appears in the Appendix to the petition, p. 16A.

Jurisdiction

The order of the New York Court of Appeals was entered on October 19, 1976. The petition for certiorari was filed on January 18, 1977.* Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257 (3).

Constitutional Provisions Involved

The Constitution of the United States provides in pertinent part:

> AMENDMENT I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."
>
> AMENDMENT XIV: "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Regulations Involved

The two Facility Staff Dress regulations promulgated by respondent dated October 29, 1968, and October 1, 1972, are reproduced in the Appendix to the Petition, pp. 2A, 4A respectively.

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* See affidavit of Paul G. Chevigny, sworn to February 16, 1977, filed with the Court.

Questions Presented

1. May a state agency dismiss a narcotics correction officer in charge of the detention, security, and rehabilitation of narcotics addicts confined pursuant to court order in a state facility because he wears religious garb at work in contravention of the agency's dress regulation for said officers.

2. Does the decision of the New York Court of Appeals, which is fully consistent with prior decisions of this Court, present any substantial federal question which warrants the exercise of this Court's jurisdiction.

Statement of the Case

Petitioner was employed by the respondent New York State Narcotics Addiction Control Commission (now New York State Office of Drug Abuse Services) as a Narcotics Correction Officer until November, 1971, when he was dismissed after a hearing,* for violating the respondent's dress code. Petitioner's job entailed the prevention of escape (14H), security (14H), and rehabilitation of narcotics addicts detained pursuant to court order (10H) in facilities maintained by the State of New York. The respondent had promulgated two "Facility Staff Dress and Grooming" codes or regulations.

The first, promulgated October 19, 1968 (2A) mandated the wearing of a business shirt, jacket and tie. The second, promulgated October 1, 1972, (4A) during the pendency of the litigation and prior to the trial hereafter discussed, which took place in 1975, provided, "all male

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* Numbers in parentheses accompanied by capital letters H, A, and T refer respectively to pages in the hearing record, pages of the appendices to the petition, and pages of the transcript of the trial, discussed hereafter, in the Supreme Court of New York, County of Westchester.

narcotic correction officers shall, while on duty, wear a dress shirt, tie, and full length slacks or trousers. Ties are optional with the employee during the summer months." (9A) The regulation was designed to prevent the imposition on the narcotic addict inmates of any religious or political views of staff members, and to prevent disruption of the rehabilitative process (5A). The regulation only limited clothing worn while on duty (6A). Also, "Only staff members employed as chaplains may wear clothing indicative of religious belief or affiliation." (6A)

Petitioner, a Sunni or Orthodox Muslim, asserted that his faith required him to wear to work a Biadlia, or long caftan, and a skull cap. Upon his refusal to conform to respondent's dress requirements, formal charges were preferred against petitioner pursuant to Section 75 of New York's Civil Service Law and, after a hearing, he was dismissed in November, 1971. Thereafter, petitioner brought a proceeding under Article 78 of New York's Civil Practice Law and Rules in the New York Supreme Court, Westchester County, challenging his dismissal as arbitrary and capricious as well as being unconstitutional. The proceeding was commenced in February, 1972. The Westchester Court, Special Term, dismissed Mr. Abdush-Shahid's petition (16A) and the Appellate Division, Second Department affirmed (18A). Petitioner appealed to the Court of Appeals which remitted to Special Term to explore the availability of a religious waiver ("dispensation") of the requirement to wear religious garb and, if not available, "then whether the needs of the facility justify overriding the religious mandate" (19A).

Pursuant to the order of the Court of Appeals, a trial was held in the Supreme Court, Westchester County. The Court's careful and comprehensive opinion concluded that, based upon the "credible evidence" presented which "preponderated in favor of the respondent," procedures to procure a "dispensation", or waiver, from the wearing of religious garb on duty are provided by the Sunni Muslim Order but were not availed of by petitioner, and the wearing of the Sunni Muslim dress is a form of proselytizing and could have a harmful effect on narcotics addicts under confinement (49A, 50A). [The court also found that there was in fact no written proof of the religious requirement claimed by petitioner.*] Petitioner appealed to the Appellate Division, Second Department, which unanimously affirmed the Westchester County judgment (51A). He subsequently appealed to the Court of Appeals, which dismissed the appeal (54A).

The evidence adduced at the trial in the Supreme Court, Westchester County, and the decision of that court, were the basis of appellate review in New York.

The petitioner offered Koli Ahmad Tawfiq, his Imam (Spiritual Leader) as a witness. Mr. Tawfiq testified that petitioner's religious garb is mandated by his religion. He also testified that there is machinery to obtain a waiver of the requirement to wear religious garb which would have to go through Muslim channels, including Saudi Arabia (27A, 28A). Nevertheless, he stated that he would not seek such a "dispensation", or waiver. Petitioner admitted that a procedure exists to procure a waiver, although in his opinion it is not necessarily likely to be granted (335T, 336T). There was no testimony that such a procedure, or the granting of a waiver, were contrary to petitioner's religious beliefs. Only if such a waiver were granted by Mr. Tawfiq, contrary to the Muslim procedures, would petitioner refuse to recognize it (332T, 31A-32A).

Raymond R. Bara, Director of respondent's Drug Rehabilitation Facilities, and in charge of the Ridge Hill Re-

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* The "Koran" has no such dress requirement. The witness claims that there is a dress provision in a book called the "Hadik", but "although the hearing extended over several days, the Hadik, in which, allegedly, such requirement appears, was never presented to the court" (26A-27A).

habilitation Center, from which petitioner was dismissed, testified on behalf of respondent. His educational, professional, and pragmatic experience with narcotic addicts is extensive (33A). He stated that religious services are provided for narcotics addicts and staff. There is no objection to staff performing religious practices as long as they do not interfere with their duties and are conducted privately (33A). The relationship between staff personnel and inmates is the primary instrument for rehabilitation, and religious dress would have an emotional effect causing the petitioner to be identified with his particular faith and interfere with the inmates' perception of petitioner as a narcotic correction officer who also has a therapeutic function (34A, 35A). He has heard derogatory comments from inmates toward the wearing of Muslim garb and that it represents an individual (narcotic correction officer) who is identified with the Islamic (Muslim) faith (37A, 38A). He stated that respondent has experienced elements of very strong religious animosity, hostility between various religious groups, not only Muslim, but also within "the so-called protestant group" (38A).

Dr. S. Seymour Joseph, a psychiatrist who has held high-level positions with respondent, testified that many inmates at Ridge Hill would have their level of anxiety heightened to a considerable degree by contact with petitioner (39A); that Sunni Muslim dress worn by correction officers would be counter-productive and anti-therapeutic. (Inmates have told him so) (40A). The narcotic correction officer is a model for inmates, and he must present a non-traumatic role (244T, 245T). The typical inmate at Ridge Hill, according to Mr. Bara, is a teenager (47H), and is "emotionally immature, dependent, highly impressionable" (87T).

Dr. Stephen Teach, a psychiatrist and witness for petitioner, testified that clothes often are a means for a drug addict to make contact with someone, and can be used to have the leverage to make changes in the addict (42A,

194T). Reverend Stephen Chinlund, an Episcopalian minister and former head of several narcotics facilities, testified for petitioner. He stated that he doesn't wear his clerical collar when working with inmates because "they *would feel I thought they ought to in some way, adhere to the religion that I was representing by my dress* (46A, emphasis by Court). Cf. testimony of Dr. Joseph, 46A, 47A.

Reasons For Denying The Petition For Certiorari

The decisions of the New York Courts are entirely consistent with prior decisions of this Court and present no substantial federal question which warrants review by this Court.*

A.

Petitioner would have this Court believe that the New York courts were trying to determine whether an ecclesiastical decision is "arbitrary". He cites *Serbian Orthodox Diocese* v. *Milivojevich*, —— U.S. ——, 44 U.S.L.W. 4927 (1976), as well as other decisions involving control of church property. Actually, it was petitioner who brought an Article 78 proceeding in the New York

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* Facts clearly indicate that petitioner's claim may be moot. The remedy he has been seeking consists of an injunction against respondent from enforcing its dress regulations and his reinstatement with full pay (16A). Had petitioner not been dismissed from respondent agency as a narcotic correction officer, he would nevertheless have been laid off on June 2, 1976, on the basis of his seniority. As a result of a drastic budget cutback, the number of facilities in which narcotic correction officers are employed has diminished from fourteen at the beginning of 1976 to only three as of February 4, 1977. (At the time of petitioner's dismissal, there were sixteen such facilities.) The number of narcotic correction officers employed by respondent has been reduced from 988 on February 25, 1976, to 137 as of January 26, 1977. (Information based on data supplied by New York State Office of Drug Abuse Services.)

court to contest an allegedly arbitrary decision by the respondent (16A, 20A). The New York courts merely sought to determine whether there had been a Muslim decision regarding the availability of a procedure to procure a waiver to wear religious garb. Such a procedure, as noted above, was recognized by petitioner, consistent with his religious beliefs. The New York courts did not look behind petitioner's religious beliefs nor challenge an ecclesiastical decision; they did not invade the cognizance of an ecclesiastical tribunal. Therefore, further inquiry into this area is unnecessary, and there is no constitutional question to be decided. Assuming, *arguendo,* that a constitutional issue is raised herein, then its pursuit is academic in view of the constitutional validity of respondent's dress regulations as discussed in B, *infra.*•

B.

Petitioner Luqman Abdush-Shahid maintains that he had a constitutional right to wear Sunni Muslim dress while he served in the capacity of a narcotics correction officer in charge of the security and rehabilitation of drug addicts detained and under treatment pursuant to court order.

The First Amendment right to free exercise of religion is not absolute and may be restricted by the state, even if only upon a showing of a compelling state interest. Valid state regulation is based upon the state's power to promote the health, safety, and general welfare of the state and to prevent impingement of rights asserted by other individuals, *Wisconsin* v. *Yoder,* 406 U.S. 205, 214, 219-220

• Petitioner cites *Sherbert* v. *Verner,* 374 U.S. 398 (1963). There was no question of the availability of a waiver in *Sherbert.* Also, petitioner cites *United States* v. *Ballard,* 322 U.S. 78 (1944). Unlike the issue raised by *Ballard,* the New York courts did not challenge the authenticity of petitioner's beliefs; petitioner offered his spiritual leader as a witness, who testified to the availability of a procedure to procure a waiver (27A, 28A). Even if it were not possible to seek a waiver, the constitutional validity of respondent's dress regulations is supported by decisions of this Court.

(1972), *Braunfeld* v. *Brown,* 366 U.S. 599, 603, 604 (1961). This Court has rejected challenges under the Free Exercise Clause to restrictions on overt acts predicated upon religious beliefs even where the acts are in accord with one's religious convictions. See *Sherbert* v. *Verner,* 374 U.S. 398, 403 (1963); *Cleveland* v. *United States,* 329 U.S. 14, 19 (1946); *Prince* v. *Massachusetts,* 321 U.S. 158, 166-167 (1944); and *Reynolds* v. *United States,* 98 U.S. 145, 146 (1878). Cf. *LaRocca* v. *Lane,* 37 N Y 2d 575, 338 N.E. 2d 606 (1975), *cert. den.* —— U.S. ——, 44 U.S.L.W. 3531 (1976).

The second decision of the Supreme Court of New York, County of Westchester (20A), upheld by the Appellate Division, Second Department (51A) and the Court of Appeals (54A), specifically found that the "wearing of Suni Muslim dress is a form of proselytizing" and has a probable "harmful effect on narcotic addicts under confinement" (50A) based upon proof adduced at trial (see Statement of the Case, *supra*). Drug addicts (mostly impressionable teenagers) confined by the state at Ridge Hill under the immediate detention and supervision of narcotics correction officers are compelled to look to the officers for leadership, guidance and example. One of petitioner's witnesses conceded that the "residents" would "feel I thought they ought to in some way adhere to the religion that I was representing by my dress [clerical garb] (46A, 47A)." The addicts, being detained and subjected to the Muslim dress—worn by an officer—have viewed the officer as representing and related to the Islamic faith, even with resultant hostility (38A). Also, there is testimony of probable counter-productive, antitherapeutic anxiety (38A, 39A, 40A) and that the addicts would view the officer, not in his official capacity, but as a representative of a particular religion.•

• Since this was an Article 78 (administrative review) proceeding, the factual disposition cannot be challenged if the conclusion is supported by substantial evidence. *Matter of Collins* v. *Codd,* 38 NY 2d 269, 342 NE 2d 524 (1976).

In *School District of Abington Township* v. *Schempp*, 374 U.S. 203 (1963), reading of passages from the Bible at public schools at the beginning of each day was held violative of the First Amendment's prohibition against the establishment of religion, although students could be excused from participating in such exercises upon written request from their parents. The Court at 374 U.S. 221 recognized that, although participation was voluntary, the Establishment Clause "does not depend upon any showing of direct governmental compulsion," quoting *Engel* v. *Vitale*, 370 U.S. 421, at 430-431 (1962). In the instant case, the narcotics addicts were detained and confined pursuant to court order, an even stronger reason for finding violation of the Establishment Clause than in *School District of Abington Township*. The purpose of the First Amendment is neutrality toward all religions, the creation of complete separation of religious activity and civil authority, 374 U.S. at 215, 217. As this Court states at 374 U.S. 221-222, "When government, the Court says, allies itself with one particular form of religion, the inevitable result is that it incurs 'the hatred, disrespect, and even contempt of those who held contrary views.'" This reaction of narcotics addicts was noted at the trial in the instant case. See also: *Epperson* v. *Arkansas*, 393 U.S. 97, 106-107 (1968) and *McCollum* v. *Board of Education*, 333 U.S. 203, 212 (1948).

Thus, the proof at trial and the New York Court's findings that wearing Muslim dress is a form of proselytizing and could have a harmful effect on narcotics addicts under confinement, accords with the applicable decisions of this Court, both with respect to valid restrictions on First Amendment free exercise rights and with respect to violation of the Establishment Clause. Petitioner's right to wear Muslim dress may be regulated to prevent impingement of the rights of the narcotics addicts and the interest of the state in maintaining neutrality toward all religion and effective therapeutic care of addicts.

Additionally, the instant case falls within the scope of *Kelly* v. *Johnson*, 425 U.S. 238 (1976), in which this Court decided that a regulation limiting the length of a policeman's hair was not violative of the police officer's First Amendment rights, nor of his claims under the Due Process and Equal Protection Clause of the Fourteenth Amendment. Luqman Abdush-Shahid was an officer (narcotics correction officer) challenging a dress regulation which requires specific items of clothing. His spiritual leader testified to the selfsame Muslim objection to wearing a police uniform as well as the clothing mandated for a narcotics correction officer (30A, 31A). A narcotics correction officer is the embodiment of authority (46A, 47A) just as is a policeman.

C.

Petitioner cites *Chicago Police Dept.* v. *Mosley*, 408 U.S. 92 (1972), in support of an argument that respondent's dress regulations create a denial of equal protection of the laws for one particular mode of expression. As discussed above, the rights of the narcotics addicts and of the state would be infringed by the assertion of petitioner's First Amendment expression. The dress regulations of respondent apply equally to all religions.

Finally, petitioner quotes from *Tinker* v. *Des Moines Ind. Comm. School Dist.*, 393 U.S. 503, 508 (1969). In *Tinker* this Court stated that the trial court had made no finding that school children's conduct (wearing armbands in protest of the Government's policy in Vietnam) would interfere with the work of their school or impinge upon the rights of others, 393 U.S. at 509. In the instant case, the New York court, in fact, made a specific finding of proselytizing and probable harmful effect on narcotics addicts under confinement (50A) supported by facts in the record. *Tinker* is clearly distinguishable.

In summary, the decisions of the New York courts are entirely consistent with prior decisions of this Court, and

petitioner has failed to present a substantial federal question or any other factor which would motivate the exercise of this Court's certiorari jurisdiction (Supreme Court Rules, Rule 19). His petition for a writ of certiorari should be denied.

CONCLUSION

The petition for writ of certiorari should be denied.

Dated: New York, New York
March 3, 1977

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

ALAN R. SMULEVITZ
Assistant Attorney General
Of Counsel